

EXHIBIT E

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK
4
5 THE PHILLIES, a Pennsylvania)
6 limited partnership,)
7)
8)
9 Plaintiff,)
10) Civil Action No.
11 vs.) 19-7239
12)
13 HARRISON/ERICKSON,)
14 INCORPORATED, a New York)
15 corporation, HARRISON ERICKSON,)
16 a partnership, and WAYDE)
17 HARRISON and BONNIE ERICKSON,)
18)
19 Defendants.)
20 -----)
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13 *****CONFIDENTIAL*****
14
15 VIDEOTAPED-TELEPHONIC 30(b)(6) DEPOSITION
16 TAKEN REMOTELY VIA
17 VIDEOCONFERENCE AND TELECONFERENCE
18 OF
19 SCOTT BRANDRETH
20 Thursday, May 7, 2020
21
22
23
24 Reported by:
25 FRANCIS X. FREDERICK, CSR, RPR, RMR
 JOB NO. 179894

	Page 2	Page 3
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2		2 APP E A R A N C E S:
3		3
4		4 (All Counsel and Participants
5	May 7, 2020	5 present via videoconference and
6	10:53 a.m.	6 teleconference due to COVID-1
7		7 restrictions.)
8	CONFIDENTIAL videotaped deposition	8
9	of SCOTT BRANDRETH, pursuant to Notice,	9 DUANE MORRIS
10	before Francis X. Frederick, a Certified	10 Attorneys for Plaintiff
11	Shorthand Reporter, Registered Merit	11 30 South 17th Street
12	Reporter and Notary Public of the States	12 Philadelphia, Pennsylvania 19103
13	of New York and New Jersey.	13 BY: TYLER MARANDOLA, ESQ.
14		14 DAVID WOLFSON, ESQ.
15		15
16		16 MITCHELL SILBERBERG & KNUPP
17		17 437 Madison Avenue
18		18 New York, New York 10022
19		19 BY: PAUL MONTCLARE, ESQ.
20		20 LEO LICHTMAN, ESQ.
21		21 - and -
22		22 MITCHELL SILBERBERG & KNUPP
23		23 1818 N Street NW
24		24 Washington, DC 20036
25		25 BY: MATTHEW WILLIAMS, ESQ.
	Page 4	Page 5
1		1
2	APP E A R A N C E S: (Cont'd.)	2 THE VIDEOGRAPHER: My name is Phil
3		3 Rizzuti. I am on a legal videographer
4	ALSO PRESENT:	4 in association with TSG Reporting, I
5	PHIL RIZZUTI, Videographer	5 know. Due to the severity of the
6		6 COVID-19 I am following the practice of
7		7 social distancing. I will not be in the
8		8 same room with the witness. Instead, I
9		9 will record this videotaped deposition
10		10 remotely. The court reporter, Francis
11		11 Frederick, also will not be in the same
12		12 room and will swear the witness
13		13 remotely. Do all parties stipulate to
14		14 the validity of this video recording and
15		15 remote swearing and that it will be
16		16 admissible in the courtroom as if it had
17		17 been taken following Rule 30 of the
18		18 Federal Rules of Civil Procedure and the
19		19 state rules where this case is pending?
20		20 MR. MONTCLARE: So stipulated by
21		21 the Defendants.
22		22 MR. MARANDOLA: This is Tyler
23		23 Marandola for the Plaintiffs. We agree.
24		24 THE VIDEOGRAPHER: Okay. Now I'm
25		25 going to have the read-on.

1 2 So the eyelashes are one piece 3 instead of two and the oval eyes are oval here 4 but their egg shaped, literally egg shaped on 5 the costume itself. 6 Q. Aside from what's -- a compare to 7 the costume, were The Phillies aware that -- 8 that Bonnie had created designs other than 9 creating the costume prior to 1984? 10 MR. MARANDOLA: Objection. 11 Outside the scope of the 30(b)(6) 12 topics. You can answer in your personal 13 capacity. 14 BY MR. MONTCLARE: 15 Q. You can answer it. Just compare 16 whatever capacity you can answer it. 17 MR. MARANDOLA: Objection. Paul, 18 are -- Scott you can answer in your 19 personal capacity. 20 MR. MONTCLARE: No, you can't 21 direct the witness how to answer. 22 Either you object and instruct him not 23 to answer or you let him answer. You 24 made your objection. Answer my 25 question --	Page 38 1 THE WITNESS: Can you read back 2 the question. 3 MR. MONTCLARE: Yeah. Not his 4 question. My question. 5 (Record read.) 6 MR. MARANDOLA: Objection. 7 Outside the scope of the 30(b)(6) 8 categories. Can you answer based on 9 your personal knowledge. 10 BY MR. MONTCLARE: 11 Q. Answer the question, please. 12 A. Yes. 13 Q. Okay. We'll come back to that in 14 a little bit. 15 You mentioned now a couple of 16 times that about it being fatter was something 17 that you guys had created or had something to 18 do with. 19 What are you exactly referring to? 20 Could you explain that to me? How did The 21 Phillies make the Phanatic fatter and when? 22 MR. MARANDOLA: Objection. 23 Mischaracterizes the testimony. You can 24 answer. 25
Page 40 1 2 A. I don't believe I mentioned making 3 the mounting fatter. I just mentioned the 4 original direction of the Phillies was to make 5 the character big and fat, furry green with 6 the long neck. 7 Q. And who at the Phillies did that? 8 A. Bill Giles. 9 Q. And what do you think -- 10 A. Said it in his testimony and I was 11 at the deposition. 12 Q. So it's based on what Mr. -- 13 A. It's what I know. 14 Q. Yeah, excuse me. Is that what Mr. 15 Giles -- you're basing this answer on what Mr. 16 Giles had said -- had they had prior to? 17 A. No. Not solely on his testimony. 18 That's been the word for years. That's what 19 I've always read, what I've always seen. 20 Q. What have you read and what have 21 you seen that said that? 22 A. I mean, I've read in books. I've 23 read in biographer of the Phanatic that we 24 have -- you know, that we used for ore media 25 guys. There's been stereos written over the	Page 41 1 2 years about the creation of the Phanatic and, 3 you know, in newspapers and magazines and that 4 was always the story. 5 Q. Do you -- so your basing this then 6 on it's just a story that you've come to know? 7 MR. MARANDOLA: Objection, vague. 8 A. Just how it was. I've been there 9 for a long time and that's what -- that's the 10 history of the Phanatic. 11 Q. Right. And is there any -- do you 12 ever look at any first-hand documents that 13 would indicate to you that Mr. Giles had 14 anything to do with those aspects of the 15 creation of the Phanatic? 16 MR. MARANDOLA: Objection, vague. 17 You can answer if you understand it. 18 A. Yeah, I don't know if there's any 19 documents. That was in the 1970s. And I was 20 obviously with The Phillies at that point. 21 So, no. 22 Q. Right. Did you ever see 23 communication from Mr. Giles to 24 Harrison/Erickson relating to any topic 25 whatsoever relating to the design of the

<p>1 initial Phanatic?</p> <p>3 MR. MARANDOLA: Objection.</p> <p>4 Outside the scope of the 30(b)(6)</p> <p>5 topics. You can answer based on your</p> <p>6 personal knowledge.</p> <p>7 BY MR. MONTCLARE:</p> <p>8 Q. Just answer my question.</p> <p>9 A. No.</p> <p>10 Q. If you go to the bottom one on the</p> <p>11 left-hand column, it's the one where he's</p> <p>12 holding a pennant, what creative contributions</p> <p>13 were made abortive The Phillies with respect</p> <p>14 to that image?</p> <p>15 A. The colors. The green. The big</p> <p>16 nose. The Phillies on the hat. The Phillie</p> <p>17 Phanatic script. The accented line there make</p> <p>18 the little dig I like to call it on the neck</p> <p>19 there to give it a little depth?</p> <p>20 Q. Was that created by anyone at the</p> <p>21 Phillies, those differences?</p> <p>22 A. They were created by -- they were</p> <p>23 done by Bonnie on the direction of The</p> <p>24 Phillies.</p> <p>25 Q. And is that direction in writing</p>	<p>1 someplace?</p> <p>3 A. No. He was working for us at the</p> <p>4 time when she did this particular design.</p> <p>5 Q. With respect to the one you were</p> <p>6 just talking about, do you know whether Bonnie</p> <p>7 had ever made a similar type design prior to</p> <p>8 October 31st, 1994?</p> <p>9 MR. MARANDOLA: Objection.</p> <p>10 Outside the scope of the 30(b)(6)</p> <p>11 topics. You can answer to your personal</p> <p>12 knowledge.</p> <p>13 Q. Just answer, please.</p> <p>14 A. Yes. I believe I've seen it -- at</p> <p>15 least a sketch of that.</p> <p>16 Q. And again, you had mentioned a big</p> <p>17 nose. That's the big nose you say that Bill</p> <p>18 Giles directed her to make; is that what</p> <p>19 you're saying?</p> <p>20 A. Yes.</p> <p>21 Q. And in the one on the right you</p> <p>22 talked about already, again, do you know</p> <p>23 whether -- withdrawn.</p> <p>24 Do you know if Harrison/Erickson</p> <p>25 had made a similar drawing prior to October</p>
<p>1</p> <p>2 31st, 1984?</p> <p>3 MR. MARANDOLA: Objection, outside</p> <p>4 the scope of the 30(b)(6) topics. If</p> <p>5 you know in your personal capacity you</p> <p>6 can answer.</p> <p>7 Q. No, just answer my question,</p> <p>8 please.</p> <p>9 MR. MARANDOLA: In your personal</p> <p>10 capacity.</p> <p>11 A. I don't -- I don't know if I've</p> <p>12 seen that one. That one was developed, like I</p> <p>13 said, about four years earlier than the other</p> <p>14 ones. And it's actually -- it's actually a</p> <p>15 little different in design than the other</p> <p>16 ones. There's no -- there's no -- as I zoom</p> <p>17 in, there's no outline between the eyes and</p> <p>18 the eyelashes and the tip and base of the</p> <p>19 snout are a little bit different as far as</p> <p>20 outline. So there's been some creative</p> <p>21 differences between that and the other -- and</p> <p>22 the ones -- that other ones that are in that</p> <p>23 style guide so it is a little bit different.</p> <p>24 And that was originally developed not for that</p> <p>25 Citizens Bank Park logos but it was developed</p>	<p>1</p> <p>2 for the Phanatic to hold the Citizens Bank</p> <p>3 Park inaugural season logo. That's why we</p> <p>4 developed it.</p> <p>5 And then after the inaugural</p> <p>6 season, we -- it's developed in way that you</p> <p>7 can stick different things in his hand. So</p> <p>8 after we won the 2008 World Series we used</p> <p>9 this design for the Phanatic to hold The</p> <p>10 Phillies 2008 World Series logos. So --</p> <p>11 Q. And when was the Citizens Bank</p> <p>12 inaugural?</p> <p>13 A. 2004.</p> <p>14 Q. Okay. Now, with respect to these</p> <p>15 particular designs you would agree that they</p> <p>16 were actually made, the designs themselves,</p> <p>17 were made by Harrison/Erickson, correct?</p> <p>18 MR. MARANDOLA: Objection, vague.</p> <p>19 A. Could you repeat that?</p> <p>20 Q. I'll withdraw it.</p> <p>21 What were the creative</p> <p>22 contributions made to each of these by Bonnie</p> <p>23 -- I'll withdraw that.</p> <p>24 What were the creative</p> <p>25 contributions made by Harrison/Erickson with</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 94 Q. Okay. And who does designer mean? MR. MARANDOLA: Objection. Occupies the scope of the 30(b)(6) topics. If you have some personal understanding you can answer. A. It means who The Phillies can ask to create the artwork. Q. How is that different from the annular? MR. MARANDOLA: Objection. To us scope of the 30(b)(6) testimony. Q. You can answer. A. I don't know. Q. And what about licensee; what is understanding of what licensee is? MR. MARANDOLA: Objection. Outside the scope of the 30(b)(6) topic. You can answer if you have a personal understanding of what that means. A. Licensee would be the Major League Baseball's vendor that designed and produced the item. Q. Okay. Well, let's start with item number 1. Is it The Phillies position that	Page 95 1 2 item number 1 is a derivative work or a non-infringing work? 4 MR. MARANDOLA: Objection, calls 5 for a legal conclusion. Objection, 6 outside the scope of the 30(b)(6) topics 7 and I instruct you not the answer on the 8 ground of attorney-client privilege and 9 work product. 10 MR. MONTCLARE: Oh, goodness. 11 BY MR. MONTCLARE: 12 Q. Do you know who created item 13 number one? 14 MR. MARANDOLA: Objection, vague. 15 Q. Do you know who created item 16 number 1. 17 A. Item number 1, it looks like it 18 was out of Major League Baseball Design 19 Services creation to commemorate the 1980 20 world champs. And it takes -- it looks like 21 that it takes an existing logo that we had 22 Bonnie create for us in 2007/2008. 23 Bonnie's creation was an 24 interpretation of the costume with noticeable 25 creative differences between the costume, the
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 96 cartoon hat, the different eyes. And the green and the big nose were directions initially by The Phillies and Major League Baseball took these -- took that logo, the hat -- I'm sorry -- the head and the pennant and they changed it and they changed the color of the hat to make it burgundy things like 1980 team and they changed the P to make it look Tyco the P in the 1980 team and they changed the pennant from red to White and they got rid of Phillie Phanatic and they put the 1980s Phillies script on the pennant. And then they added a circular with 1980 world champions text. Q. Okay. So you're saying that The Phillies created that was based on what Bill Giles' testimony is? A. That was one of Bill Giles's earliest directions to Harrison/Erickson. Q. And that's what -- The Phillies understand that based on what guys has told them? A. Among other things, yes. Q. What other things?	Page 97 1 2 A. That's the -- that's been written, that's been in articles, that's been in videos. It's been, you know, part of the story -- it's part of the story of Phillies baseball and part of the story of the Phanatic. 3 4 5 6 7 8 Q. And do you know if any of those people have any first-hand knowledge about what Bill Giles did who wrote those articles, told those stories? 9 10 A. I don't know that. 11 12 Q. Okay. So if you move over to the fourth column under approximate date of creation it says 2007. Do you see that? 13 14 A. I do. 15 16 Q. Are you saying that item 1 was created in 2007 screenings, outside the scope of the 30(b)(6) topics. You can answer if you know personally. 17 18 A. I don't know when it was created. 19 Around there -- around that date is likely. 20 21 Q. Well, if you take a look at item 1 it says 1980 world champions. Is it your testimony on behalf of The Phillies that that

1 2 image was created in 2007? 3 MR. MARANDOLA: Objection. 4 Outside the scope of the 30(b)(6) topic. 5 Sorry, Paul. Objection, outside the 6 scope of the 30(b)(6) topics. 7 Q. You can answer. 8 A. Yes. 9 Q. Okay. So is it your testimony the 10 logo -- withdrawn -- that the image in item 1 11 was first created in 2007 just the way it 12 appears in this document? 13 A. Yes. 14 Q. So why does it say 1980 world 15 champions? 16 A. Because it's a made-up logo about 17 the 1980 world champions. Could I make up a 18 logo that says 1916 world champions and use a 19 different -- something in the middle. 20 Q. I'm not arguing. I'm just asking 21 -- I'm just giving you every opportunity to 22 explain yourself. So you're saying that this 23 was made in 2007 and it is a logo that put 24 1980 world champions on it. Is that what 25 you're saying?	Page 98 1 2 A. I am saying that, yes, around 3 2007. I'm not scat sure if it was 2007, 2008. 4 But that's when it appeared. 5 Q. Was a similar logo created closer 6 to 1980? 7 A. I don't know that. 8 Q. Okay. You say that there's some 9 date stamp numbers and documents. Do you see 10 that those? 11 A. Yes. 12 Q. And do you know who those are? 13 A. Not necessarily. 14 Q. Okay. Have you reviewed any of 15 these documents that are reflected in this 16 column under Bates stamp numbers? 17 A. No. 18 Q. In the final column under the 19 annular designer licensee it says 20 Harrison/Erickson. Were Harrison/Erickson the 21 authors? 22 MR. MARANDOLA: Objection. Calls 23 for a legal conclusion. Outside the 24 scope of the 30(b)(6) topics. If you 25 have personal knowledge you can answer.
Page 100 1 2 A. I do not know if they're authors 3 of this. 4 Q. Did they create the image in item 5 1? 6 A. At the behest in the Phillies in 7 2007 and 2008, they -- we asked them to create 8 the -- that inset design of the Phanatic 9 holding the pennant out. 10 Like I just described, the design 11 itself was manipulated to turn it back to 1980 12 coloring and logos. 13 Q. Okay. And do you know whether or 14 not that item 1 is similar to any prior 15 creation by Harrison/Erickson, that occurred 16 prior to October 31st, 1984? 17 MR. MARANDOLA: Objection, vague. 18 And objection, outside the scope of the 19 30(b)(6) topics. You can answer in your 20 personal capacity. 21 A. I believe there's some sketches of 22 the Phanatic's head with him holding the 23 pennant in his cup. 24 Q. And that was, in fact, what we 25 looked at earlier, do you know?	Page 101 1 2 A. I believe it's one of the ones we 3 saw earlier. 4 Q. Okay. In the -- okay. 5 We'll get to that again later. 6 Is there a licensee referred to in 7 this row relating to item number one? 8 A. No. 9 Q. Did The Phillies add any creative 10 content to item number one? 11 A. Yes. At the beginning the green 12 color, the big snout, the baseball elements 13 that are here. In this case the hat, the 14 pennant. Those were our contributions. 15 Q. And, again, when were those 16 contributions made? 17 A. 1978. 18 Q. And the information that you have 19 about that comes from where? 20 A. Comes from working at the Phillies 21 and knowing the history of the team and the 22 mascot. 23 Q. And how do you know that? 24 Is it based on what people told 25 you?

<p>1</p> <p>2 MR. MARANDOLA: Objection, asked 3 and answered. You can answer again.</p> <p>4 A. Yeah. What I've read, what I saw, 5 what I viewed. What I read in articles. What 6 I read in Phillies publications. What I read 7 in Mr. Giles' testimony. It's not secret 8 knowledge.</p> <p>9 Q. Okay. Anything else other than 10 what you've testified about?</p> <p>11 A. No.</p> <p>12 Q. Okay. With respect to item number 13 one, is this image a portrayal of the 14 Phanatic?</p> <p>15 A. It's a 2-D interpretation of the 16 Phanatic where a lot of creative license was 17 taken to make it look good on a 18 two-dimensional design.</p> <p>19 So it's not exactly like the 20 Phanatic. It takes some liberties with the 21 cartoon-ish hat. It takes some liberties with 22 the eyebrows that are one -- the one distinct 23 piece versus the two pieces that appear on the 24 costume. The eyeballs are pretty different 25 because they're flat ovals here, whereas, on</p>	<p>1</p> <p>2 the costume they're literally egg-shaped 3-D 3 eyeballs. So.</p> <p>4 Q. I understand. You don't need to 5 repeat that testimony. We don't need to go 6 down that road again?</p> <p>7 MR. MARANDOLA: Don't interrupt 8 the witness, Paul.</p> <p>9 Q. Unless you want to. You've said 10 the same mantra. I heard it ten times 11 already. You could say answer A and I'll 12 understand what you mean.</p> <p>13 MR. MARANDOLA: Paul, just let the 14 witness answer the question.</p> <p>15 Were you finished, Scott --</p> <p>16 MR. MONTCLARE: I'm trying -- 17 okay.</p> <p>18 THE WITNESS: I'm finished.</p> <p>19 BY MR. MONTCLARE:</p> <p>20 Q. This image is supposed to portray 21 the Phanatic which is the mascot in this 22 period of time in 2007; is that correct?</p> <p>23 A. No.</p> <p>24 Q. No? This is a different character 25 altogether? It doesn't involve the mascot?</p>
<p>1</p> <p>2 A. Well, it's intending to portray 3 the Phanatic as he looked in 1980.</p> <p>4 Q. Okay. Thank you.</p> <p>5 All right. So let's go to the 6 next one on the list. Number 40.</p> <p>7 Are you with me?</p> <p>8 A. I'm trying to find number 40.</p> <p>9 MR. MARANDOLA: Page 40 or number 10 40?</p> <p>11 MR. MONTCLARE: No. Number 40.</p> <p>12 Page 17.</p> <p>13 A. Okay. Thank you.</p> <p>14 Q. Who created this image?</p> <p>15 A. I believe Harrison/Erickson was 16 commissioned to create that from -- by The 17 Phillies to help with some appearances. So 18 it's got the same creative elements that The 19 Phillies portrayed -- or that The Phillies 20 initially asked them to do instead of the egg. 21 So it's big, it's fat, it's got the long nose. 22 It's green. And, again, it's The Phillies 23 baseball logo here, the baseball hat, the 24 baseball jersey, the baseball socks. And The 25 Phillies asked them to do that and they did a</p>	<p>1</p> <p>2 creative job of turning from it 3-D to 2-D by 3 adding some elements and it looks like it's -- 4 I believe it's something that we've used for 5 coming events or for Phanatic appearances. 6 But that was before -- I wasn't around for 7 this.</p> <p>8 Q. Okay. So this is portrayal of the 9 Phanatic as it was created in 1978?</p> <p>10 A. Well, there's some elements of it, 11 yes. But it was updated.</p> <p>12 Q. And what were the updated 13 elements?</p> <p>14 A. The updates are The Phillies logos 15 and coloring. The hat is red with a blue 16 button as opposed to burgundy with a white 17 button. The jersey does not have the thick 18 piping on the shoulder and down the sleeves as 19 it did in the 1980s. You can't see The 20 Phillies script on the front but that would be 21 different than it was -- than it was in the 22 '80s. This one looks a little different. It 23 looks like the shoes are a different color 24 than the body was probably not correct but 25 sometimes changes were made for different</p>